

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI
MDL No. 1827

This Order Relates To:

No. C 11-2591 SI

T-MOBILE U.S.A., INC.,

**ORDER RE: DEFENDANTS' MOTIONS
TO DISMISS**

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.

Currently before the Court are three motions to dismiss in this matter: (1) a joint motion filed by the majority of the defendants; (2) a motion filed by defendants Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (collectively, "SDI"); and (3) a joinder filed by defendant Sanyo Consumer Electronics Co., Ltd. Pursuant to Civil Local Rule 7-1(b), the Court finds these matters suitable for disposition without oral argument and therefore VACATES the hearing currently scheduled for February 10, 2012. Having considered the parties' papers, and for good cause appearing, the Court hereby GRANTS defendants' joint motion, GRANTS SDI's motion, and DENIES Sanyo's motion.

BACKGROUND

Plaintiff T-Mobile U.S.A., Inc., a Delaware corporation with its principal place of business in Bellevue, Washington, is "one of the largest national providers of mobile wireless telecommunications

1 services in the United States.” First Amended Complaint (“FAC”) at ¶22. On April 18, 2011, T-Mobile
 2 filed this action in the Western District of Washington, seeking to recover for a price-fixing conspiracy
 3 in the market for Liquid Crystal Display (“LCD”) panels. Compl. at ¶¶2-9. T-Mobile claims that it
 4 “purchased billions of dollars worth of mobile wireless handsets in the United States,” the majority of
 5 which contained LCD panels. FAC at ¶1. Its FAC seeks to recover any damages it suffered as a result
 6 of the conspiracy under 1) the Sherman Act; 2) California’s Cartwright Act; 3) the California Unfair
 7 Competition Law; and 4) New York’s Donnelly Act. FAC at ¶¶280-299.

8 Defendants now move to dismiss T-Mobile’s FAC.

10 LEGAL STANDARD

11 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint that
 12 fails to state a claim upon which relief may be granted. To survive a Rule 12(b)(6) motion to dismiss,
 13 the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
 14 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “facial plausibility” standard requires the plaintiff
 15 to allege facts that add up to “more than a sheer possibility that a defendant has acted unlawfully.”
 16 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). While courts do not require “heightened fact pleading
 17 of specifics,” a plaintiff must allege facts sufficient to “raise a right to relief above the speculative
 18 level.” *Twombly*, 550 U.S. at 544, 555.

19 In deciding whether the plaintiff has stated a claim upon which relief may be granted, the Court
 20 must assume that the plaintiff’s allegations are true and must draw all reasonable inferences in the
 21 plaintiff’s favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the
 22 Court is not required to accept as true “allegations that are merely conclusory, unwarranted deductions
 23 of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

25 DISCUSSION

26 Collectively, the three motions seek dismissal of two aspects of T-Mobile’s complaint:
 27 defendants’ joint motion and SDI’s motion seek dismissal of T-Mobile’s state-law claims, while Sanyo’s
 28

1 motion seeks dismissal of T-Mobile's claims against Sanyo.¹

3 **I. T-Mobile's State Law Claims**

4 Defendants' joint motion and SDI's motion raise two grounds for dismissal of T-Mobile's state
5 law claims. First, the motions assert that T-Mobile's California-law claims are untimely. Second, the
6 motions assert that T-Mobile's California and New York claims must be dismissed because T-Mobile
7 does not allege that it made any purchases in California or New York.

8 The Court agrees that T-Mobile has failed to adequately allege that it purchased LCD products
9 in New York and California. Its FAC alleges only that T-Mobile "conducted a substantial amount of
10 business in California," and "as a result of its presence . . . T-Mobile is entitled to the protection of the
11 laws of California." FAC at ¶¶289-90; *see also* FAC at ¶¶299 (same allegations for New York). This
12 Court, however, has held that mere presence is not enough to invoke the law of a particular state: "in
13 order to invoke the various state laws at issue, [a plaintiff] must be able to allege that 'the occurrence
14 or transaction giving rise to the litigation' – which is [plaintiff's] purchase of allegedly price-fixed goods
15 – occurred in the various states." *See, e.g.,* Order Granting Defendants' Joint Motion to Dismiss and
16 Granting Plaintiffs Leave to Amend, Master Docket No. 1823, at 3-5 (June 28, 2010). Plaintiffs' vague
17 allegations are not sufficient to meet this standard.²

18 Accordingly, the Court GRANTS defendants' and SDI's motions. In light of this holding, the
19 Court need not reach defendants' argument that T-Mobile's California claims are untimely.

21 **II. Sanyo's Motion**

22 Sanyo's motion raises a single issue: whether T-Mobile's allegations against it are sufficient to
23 state a claim for relief. The Court has previously addressed this argument in a case brought by Motorola

25 ¹Defendants also seek dismissal to the extent T-Mobile seeks to recover for indirect purchases
26 under federal law, and under the Donnelly Act for purchases made prior to December 23, 1998, the date
New York enacted its "*Illinois Brick* repealer" statute. In its opposition, T-Mobile represents that it
does not seek to recover on either ground.

27 ²Indeed, T-Mobile recognizes as much; it's one-paragraph response to this issue "acknowledges
28 the Court's prior rulings on this question." Oppo. at 1. Accordingly, this dismissal is without leave to
amend.

1 Mobility. *See* Order Denying Sanyo Consumer Electronics Co., Ltd.’s Motion to Dismiss Motorola
2 Mobility, Inc.’s Third Amended Complaint, Master Docket No. 4145, at 1-2 (Nov. 15, 2011). The Court
3 found that Motorola’s complaint sufficiently alleged Sanyo’s participation in the price-fixing
4 conspiracy.

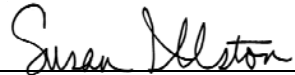
5 T-Mobile’s allegations against Sanyo are almost identical to those in Motorola’s complaint. As
6 in the Motorola matter, T-Mobile alleges that Sanyo “joined the conspiracy by holding illegal price
7 discussions with Samsung, Chunghwa, and Toshiba.” *Id.*; *see also* FAC at ¶¶107-08, 125-26. Its FAC
8 also includes such details as “the dates [the discussions] occurred, the identities of those involved, and
9 the subject matters discussed.” *Id.* Accordingly, the Court finds that T-Mobile’s allegations against
10 Sanyo are sufficient to state a claim.

11 12 CONCLUSION

13 For the foregoing reasons and for good cause shown, the Court hereby GRANTS defendants’
14 joint motion to dismiss, GRANTS SDI’s motion to dismiss, and DENIES Sanyo’s motion to dismiss.
15 Docket Nos. 4325, 4326, 4327, 4521 in 07-1827; Docket Nos. 60, 61, 62 in 11-2591.

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17 **IT IS SO ORDERED.**

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19 Dated: February 6, 2012

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SUSAN ILLSTON
United States District Judge